

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 473 of 1988

with

CRIMINAL APPEAL No 474 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

ABDUL RAHIM YAKUB MODA

Appearance:

1. Criminal Appeal No. 473 of 1988
MR SD PANDYA, ADDL. PUBLIC PROSECUTOR for Petitioner
MR KJ SHETHNA for Respondent No. 1, 2, 3, 4, 5, 6, 7, 8, 9,10,11
2. Criminal AppealNo 474 of 1988
MR. SD PANDYA, ADDL. PUBLIC PROSECUTOR for Petitioner
MR KJ SHETHNA for Respondent No. 1, 2, 3, 4, 5, 6, 7, 8, 9,10,11

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 09/07/98

ORAL JUDGEMENT

1. By means of filing this appeal under section 378 of the Code of Criminal Procedure, the appellant - State of Gujarat has questioned the legality, validity and propriety of the judgement and order dated 10/2/1988 rendered in Criminal Cases No. 3011/83 and 2384/83 (consolidated cases), whereby the respondents herein were acquitted of the offence punishable under section 147, 149, 323, 325, 504 Indian Penal Code.

2. There was quarrel between the present appellant No.1, 2 and 8 on one hand and the complainant - Daudbhai Haji Musabhai on the other hand with respect to land and therefore, civil cases between both the parties were also pending in the Civil Court and the complainant also lodged the complaint for defamation against the appellant No.1 and therefore, there was enmity between both parties and as a result of the same, all the respondents formed unlawful assembly on 7/10/83 at 7.30 p.m. and they have assaulted and abused in filthy language to the complainant Daudbhai Haji Musabhai.

3. The complaint with respect to the aforesaid incident was lodged before the concerned police station and in pursuance to the same, charge sheet was also filed and the case was registered as Criminal Case No.3011/83. Simultaneously, a private complaint was also filed before the learned Magistrate which was registered as Criminal Case No. 2384/83. Both the cases were for the same incident and therefore, both the cases came to be consolidated and after recording the common evidence, both the cases came to be disposed of by common judgement.

4. Learned Magistrate, after recording the evidence and on appreciation of the same, he came to the conclusion that the charges against the respondents were not proved and therefore, they were acquitted of the offence with which they were charged. Feeling aggrieved with the aforesaid order, the State of Gujarat has preferred this appeal.

5. At the time of admission of this appeal, this Court passed the following order :

"Coram : B.S.Kapadia, J. :

Leave to appeal granted excepting the respondents

No. 5 and 11 i.e. Ibrahim Safi Kaiya and Abdul Hai Raksulbhai. Appeal admitted against the

respondents No. 1 to 4 and 6 to 10 only.

Leave to appeal refused in respect of respondents

Nos. 5 and 11. Appeal against respondent No.5 and 11 dismissed.

Dated : 29/7/88 sd/-

[B.S.KAPADIA, J.] "

6. Today, when this matter came up for final hearing before this Court, Mr.Adil Mehta for Mr.K.J.Shethna, learned counsel for respondents submitted that the compromise has been arrived at between the respondent original accused and the original complainant - victim Daudbhai Haji Musabhai and as the alleged offence is punishable u/s 325 of the IPC, this Court can also accept the compromise pursis by virtue of the powers u/s 320 of the Code of Criminal Procedure.

7. I have heard Mr.S.D.Pandya, learned APP for the appellant, State of Gujarat, Mr. E.E.Saiyed, learned counsel for the original victim - injured complainant and Mr. Adil Mehta for Mr.K.J.Shethna, learned counsel for the respondents - accused. I have also perused the compromise pursis which is on stamp paper of Rs.20/signed by the original complainant and the respondent No.1 / accused No.1.

8. After having given anxious considerate thought to the submissions of the learned counsel for the parties and having perused the compromise pursis and in a fact situation stated in the compromise pursis, it could be made out that both the parties are belonging to the same religion and with a view to create harmony amongst them and to avoid the obstacle in educational and religious work, they have determined to settle the matter which is pending before this Court and therefore, in the presence of the panchas of their religion, they have entered into compromise and the said compromise was reduced into writing which also bears their signatures which they have produced before this Court.

9. In view of this state of affairs, when there is no enmity between both the parties, no useful parties would be served by further prosecuting this appeal and therefore, there is no reason not to accede the joint request made by the aggrieved party and the respondents herein. Hence, permission to compromise is granted and the pursis is recorded and resultantly, the appeal is liable to be dismissed.

10. In the result, as the matter is compromised between the parties, the appeal stands dismissed.

11. The compromise pursis filed on the stamp paper of Rs.20/- is ordered to be retained on record of this matter.

parmar*